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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/734,925	12/12/2003	Axel L. Bernhard	035562-000001	2233
24239 7590 07/06/2011 MOORE & VAN ALLEN PLLC P.O. BOX 13706 Research Triangle Park, NC 27709				
EXAMINER EVANSKO, GEORGE ROBERT				
ART UNIT		PAPER NUMBER		
3762				
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07/06/2011		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/734,925

Applicant(s)

BERNHARD ET AL.

Examiner

GEORGE EVANISKO

Art Unit

3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 May 2011.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3-14, 16-19, 21, 22 and 26-30 is/are pending in the application.
- 4a) Of the above claim(s) 4-14, 16-19 and 22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3, 21, 26-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No.(s)/all Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Claims 4-14,16-19 and 22 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected group, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 2/21/07.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 26-29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 26, “are located in a ...relationship” is vague since no element has been set forth to hold the electrodes in a spatial relationship and “are located” sounds more like a method step than structural limitation.

In claim 27, “a mask” is inferentially included and it is unclear if the applicant is positively or functionally reciting the mask. If the mask is being positively recited it is suggested to first set forth there is a mask before it is used in a connection in the claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1, 21, and 26-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barreras, Sr. et al (5895416) in view of Meadows et al (6516227). Barreras shows in figure 12 the three probes and shows in figures 10 and 11 the use of a single unit containing the two switching devices and electrical current control circuit and control device (e.g. figures 13-15) to provide simultaneous current between a connection probe and two other return probes (e.g. figure 12). Barreras' probe/leads are capable of being placed temporarily on the skin since nothing prevents the leads from being placed on the skin and since they will function outside the body and his leads have a predetermined distance between probes as set forth by the lead/paddle. Barreras also discloses the use of multiple different combinations of active and return electrodes as combinations A, B, and C, but does not disclose the repeatedly varying the formation of probes during a treatment and the use of a mask (i.e. one sheet of material to hold the electrodes that will cover an area). Meadows discloses the repeatedly varying of the formation of the probes during a treatment (e.g. figure 3A, 3B, column 12, 14, 15, etc) and the use of a mask/sheet of material to hold the electrodes together at a fixed distance that will cover an area

such as the face or body (e.g. figure 2A, d and e) so that the treatment/therapy includes multiple stimulation fields to treat multiple conditions/areas of the patient in one treatment/therapy and to allow the electrodes to be placed together at once and at a fixed distance. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include in the stimulation system and method as taught by Barreras or extend the therapy treatment as taught by Barreras to include, the repeatedly varying of the formation of the probes during a treatment and the mask holding the electrodes at a fixed distance that will cover an area of the body as taught by Meadows, since such a modification would provide the predictable results of multiple stimulation fields to treat multiple conditions/areas of the patient in one treatment/therapy and to allow the electrodes to be placed together at once and at a fixed distance. (In addition, making an integral structure, such as one paddle/mask to hold the electrodes out of several pieces is obvious and well known in the art, In re Larson, 340 F.2d 965, 968, 144 USPQ 347, 349 (CCPA 1965)).

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barreras et al in view of Meadows ("modified Barreras"). Modified Barreras discloses the claimed invention except for calling his electrical current control circuit and switching devices are multiplexing devices. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the stimulation system as taught by modified Barreras, with the use of multiplexing devices as the current control circuit and switching devices since it was known in the art that stimulation systems use multiplexing devices, for such elements as current

control circuits and switching devices, to provide the predictable results of conventional, well tested devices for easily switching between different elements.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection necessitated by amendment.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **GEORGE EVANISKO** whose telephone number is (571)272-4945. The examiner can normally be reached on M-F 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Niketa Patel can be reached on 571 272 4156. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/George R Evanisko/
Primary Examiner, Art Unit 3762

GRE
6/28/11